IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5975 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MADHUKAR NATVERLAL BHATT

Versus

KHAMBHAT NAGAR PALIKA

Appearance:

1. Special Civil Application No. 5975 of 1999

MR UT Mishra for Mr. TR MISHRA for Petitioner No. 1

MR DJ BHATT for Respondent No. 1

M/S THAKKAR ASSOC. for Respondent No. 1

Mr. KL Pandya, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 02/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr. UT Mishra for Mr. TR Mishra for the petitioner; Mr. Bhatt, learned advocate for respondent no. 1 and Mr. Pandya, learned AGP for respondent NO.2.

The facts of the present petition, in short, are to the effect that the petitioner who was serving in the respondent Khambhat Nagar Palika retired on 30.9.1998; his gratuity and other terminal benefits have not been released so far; the respondent nagarpalika, at the first instance, informed that his terminal benefits will be released after obtaining legal opinion from their advocate as the petition being SCA No. 7116 of 1995 is pending. According to the petitioner, advocate for the respondent nagarpalika gave his opinion in favour of the petitioner. Thereafter, the petitioner made various representations but of no avail. It is also the grievance of the petitioner that the respondents have not released or finalized or decided the pensionary benefits till this date. In view of such grievances, the petitioner has approached this court by way of this petition.

As per the facts of the present case, the petitioner was placed under suspension on 21st September, 1986 by the nagarpalika. On 17/28th May, 1987, the District Collector passed order suspending resolution of the Nagarpalika and directed for reinstatement of the petitioner. According to the petitioner from 1987 to 1996, various legal proceedings were going on between the parties and ultimately, the petitioner was reinstated in service on 20.9.1996 by the respondent Nagarpalika and on 31.9.1998, he retired from service and thereafter, made several representations for retirement benefits but of no avail.

During the course of hearing, learned advocate Mr.D.J. Bhatt appearing for the respondent nagarpalika has submitted that on 12th October, 1986, resignation was submitted by the petitioner but the resolution accepting the resignation of the petitioner has been stayed by the District Collector, Kheda. He also submitted that the order of the Collector staying the operation of the resolution of the nagarpalika accepting the resignation of the petitioner was challenged by the respondent nagarpalika before this court by filing special civil application no. 3083 of 1989 which was subsequently withdrawn by the respondent nagarpalika but subsequently, miscellaneous civil application no. 1401 of 1991 was filed by the respondent nagarpalika for restoration of the said SCA No. 3083 of 1989 and the same is pending

before this court till this date and, therefore, in view of the pendency of the said application, according to him, all the benefits which are available to the petitioner from the date of retirement have been paid. According to him, now the dispute is only for a period of about ten years from 12th October, 1986 to 20th September, 1996 and the benefits of the said period have not been paid in view of the pendency of the aforesaid Miscellaneous Civil Application No. 1401 of 1991 filed by the respondent no.1 nagarpalika for restoration of the aforesaid petition.

On the other hand, learned advocate Mr.U.T.Mishra appearing for the petitioner has submitted that the petitioner has been deprived of the benefits only because of the pendency of the MISCELLANEOUS CIVIL APPLICATION No. 1041 of 1991;more than 11 years have passed which is causing grave injustice to the petitioner and, therefore, some suitable directions may be issued to the respondents for making payment of the benefits of the above period being continuous service and on that basis, whatever retirement benefits available to the petitioner may be ordered to be paid to the petitioner without prejudice to the rights and contentions of the respondent nagarpalika in the aforesaid Misc. Civil Application No. 1041 of 1991.

I have considered the submissions made by the learned advocates for the parties. I have also considered the fact that the resignation was tendered by the petitioner and the resolution of the respondent Nagarpalika accepting the said resignation was stayed by the Collector against which petition being SCA No. 3083 of 1989 was filed by the respondent Nagarpalika which was subsequently withdrawn by the Nagarpalika and then Misc. Civil Application No. 1041 of 1991 was filed by the respondent nagarpalika for recalling the order of withdrawal of SCA No. 3083 of 1989 and for restoration of the said petition which miscellaneous civil application is yet pending before this court and on that ground the respondent nagarpalika has not been paying the benefits for a period from about 1986 till 1996 and on that ground, the nagarpalika is not counting the service of the petitioner as continuous service. In light of these admitted facts, according to my opinion, so long as the order of the collector staying the operation of the resolution of the nagarpalika accepting resignation of the petitioner operates and not set aside by any higher forum, respondent no.1 nagarpalika is not justified in withholding the payment for the aforesaid period only on the ground of pendency of the aforesaid miscellaneous

civil application. I am of the opinion that so long as the order of the collector remains in force and not set aside by the higher forum, it is the duty of the respondent nagarpalika to implement and execute the same in letter and spirit without prejudice to its rights and contentions.

Therefore, considering all these aspects of the matter, respondent nagarpalika is directed top ay all the retirement benefits which are available to the petitioner by considering his continuous service from 12th October, 1986 to 20th September, 1996 and to pay arrears or difference of benefit, if any, within three months from the date of receipt of copy of this order without prejudice to its rights and contentions and also subject to the ultimate out come of the proceedings in Misc. Civil Application No. 1041 of 1991. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt. 2.9.2003. (H.K. Rathod,J.)

Vyas